

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09

PLR-105807-06

Date:

November 28, 2006

Legend

Taxpayer 1	=
Taxpayer 2	=
Trust I	=
Trust II	=
CRUT I	=
CRUT II	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
A	=
B	=
C	=
D	=

Dear :

This is in response to your letter dated January 5, 2006, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to certain trusts.

In Year 1, Taxpayer 1 and Taxpayer 2 established Trust I and Trust II. Trust I and Trust II have GST potential. In Year 1, Taxpayer 1 made a gift to Trust I. In Year 2, Taxpayer 2 made gifts to Trust II. Taxpayers 1 and 2 retained an accounting firm to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Years 1 and 2. On these returns, Taxpayers 1 and 2 elected to treat gifts made by either in Years 1 and 2 as made by both under § 2513. In preparing the

returns, the accounting firm inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's GST exemption to the Year 1 and 2 gifts to Trusts I and II.

In Year 3, Taxpayers 1 and 2 established CRUT I for the benefit of their grandchild and charity. In Year 4, Taxpayers 1 and 2 established CRUT II for the benefit of their grandchild and charity. In Year 4, Taxpayers 1 and 2 made gifts to CRUTs I and II. Taxpayers retained an accounting firm to prepare their Forms 709 for Year 4. On these returns, Taxpayers 1 and 2 elected to treat gifts made by either in Year 4 as made by both under § 2513.

In preparing the Year 4 returns, the accounting firm allocated Taxpayer 1's and Taxpayer 2's GST exemption to the Year 4 gifts to CRUTs I and II. However, in allocating GST exemptions to these gifts the accounting firm inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to the amount of their gifts that was excluded under § 2503(b) in determining the total amount of gifts for Year 4. This amount was \$A for each Taxpayer for each CRUT.

In Year 5, Taxpayer 2 died. The remainder of Taxpayer 2's GST exemption was affirmatively and automatically allocated at his death. Taxpayer 1 was appointed executrix of Taxpayer 2's estate.

Taxpayer 1 currently has GST exemption available of approximately \$B, which is less than Taxpayer 1's portion of the gifts to Trusts I and II and Taxpayer 1's portion of the gifts to CRUTs I and II that were excluded under § 2503(b) in determining the total amount of gifts for Year 4.

Taxpayer 1, individually and as executrix of Taxpayer 2's estate, is requesting an extension of time to allocate Taxpayer 1's and Taxpayer 2's GST exemption to the gifts Taxpayers 1 and 2 made to Trusts I and II and the portion of the gifts Taxpayers 1 and 2 made to CRUTs I and II that were reported as annual exclusion amounts under § 2503(b).

Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a), in effect at the time of the transfer, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of

\$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such portion, the entire unused portion shall be allocated to the property transferred. Section 2632(c)(3)(A) provides that for purposes of § 2632(c) the term indirect skip means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST trust. Section 2032(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000. See P.L. 107-16, §561(a).

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2032(a) shall be deemed to be allocated as follows--(A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 26.2632-1(d)(2) provides that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the non-exempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST

exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective.

Section 2642(b)(1) provided that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(c)(1) provides that in the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

Section 2642(c)(2) provides that § 2642(c)(1) shall not apply to any transfer to a trust for the benefit of an individual unless (A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and (B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Section 26.2642-1(c)(3) provides generally that, for purposes of chapter 13, a transfer is a nontaxable gift to the extent the transfer is excluded from taxable gifts by reason of § 2503(b) (after application of § 2513) or § 2503(e). However, a transfer to a trust for the benefit of an individual is not a nontaxable gift for purposes of this section unless -- (i) trust principal or income may, during the individual's lifetime, be distributed only to or for the benefit of the individual; and (ii) the assets of the trust will be includible in the gross estate of the individual if the individual dies before the trust terminates.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2624(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

With respect to Taxpayer 1's request for relief, based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer 1 is granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer 1's available GST exemption of approximately \$B to her portion of the gifts made to Trusts I and II. Taxpayer 1's available GST exemption of \$B will first be allocated to Trust I and then to Trust II. Therefore, Trust I will receive approximately \$C of her GST exemption and Trust II will receive approximately \$D of her GST exemption. The allocations will be effective as of the date

of each transfer. The allocations should be made on supplemental Forms 709 for each year in which there was a transfer and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Based upon the facts submitted and the representations made, Taxpayer 1's request for an extension of time to allocate her available GST exemption to the portion of her Year 4 transfers to CRUTs I and II that was excluded in determining the total gifts for Year 4 under § 2503(b) is denied. After the allocation of Taxpayer 1's available GST exemption of approximately \$B to Trusts I and II, no GST exemption is available to allocate to the portion of her gifts to CRUTs I and II that were covered by the annual exclusion under to § 2503(b).

With respect to the request for relief made on behalf of Taxpayer 2's estate, based upon the facts submitted and the representations made, all of Taxpayer 2's GST exemption was allocated either before his death or at his death. Because § 2631(b) provides that allocations of GST exemption are irrevocable once made, the request for relief made on behalf of Taxpayer 2's estate is denied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied as to the value for Federal transfer tax purposes of any gifts Taxpayer 1 and Taxpayer 2 made to any trust.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes
Copies of the letter